



UTAH ASSOCIATION

OF COUNTY **BOARD MEMBERS**
INSURANCE **PARTICIPATING**

UACIM BOARD OF TRUSTEES TELEPHONIC CONFERENCE

MINUTES

February 11, 1998, 9:00 a.m.

BOARD MEMBERS UNABLE TO PARTICIPATE

Gary Herbert, *President*, Utah County Commissioner
Jerry Hess, *Vice President*, Davis County Deputy Attorney
Dan McConkie, *Secretary/Treasurer*, Davis County Commissioner
Tony Dearden, Millard County Commissioner
John Swasey, Duchesne County Commissioner

Chad Johnson, Beaver County Commissioner
Ty Lewis, San Juan County Commissioner
Monte Munns, Box Elder County Assessor-Treasurer
Tex Olsen, Sevier County Commissioner

OTHERS PARTICIPATING

Kent Sundberg, Chairman, Litigation Management Committee
Brett Rich, Director, UACIM
Sonya White, Executive Assistant

CALL to ORDER

Gary Herbert called the meeting to order and welcomed those in attendance.

ACTUARY SERVICES

Since November, Brett Rich explained that he has been in the process of negotiating an actuarial contract with Coopers & Lybrand. On January 30, 1998 a copy of the contract was faxed to Brett from Coopers & Lybrand's legal department with the following language added:

Limitation of Liability. NEITHER PARTY SHALL BE LIABLE FOR LOST PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES EVEN IF C&L HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In any event, the liability of C&L to COMPANY shall be limited to direct damages and shall not exceed the fees paid by COMPANY to C&L for the particular Engagement Schedule(s) under which the claim arises or to which it relates. This limitation applies to all causes of action or claims in the aggregate, including without limitation, breach of contract, negligence, strict liability and other torts. Further, no cause of action, which accrued more than two years prior to the filing of a suit alleging such cause, may be asserted against either party.

This language is unacceptable in that it limits action two years from the occurrence and limits damages to the amount paid in fees or approximately \$8,500. Coopers & Lybrand has a \$2 million E&O policy yet insists on limiting any damages because in their opinion they do not collect enough in fees to accept the risk. Coopers & Lybrand stated that this language is nonnegotiable and has put the Mutual in a difficult position—the actuarial opinion must be completed in the next 10 days.

Brett looked at two actuarial proposals from previous years (Milliman & Roberts who bid \$15-\$20,000 and Tillinghast who bid \$15-\$30,000) and Taylor, Walker & Associates who bid \$7,000. Brett met with Glen Taylor, who used to work for the Insurance Department, to review the Mutual's program and the proposed contract. Glen had some corrections to the contract regarding the substance of information the Mutual provides but otherwise is willing to sign the contract. Kent Sundberg has reviewed the contract and finds it satisfactory.

Taylor, Walker & Associates carry only a \$1 million E&O policy, which is adequate. Also, if the Board decides to hire a new actuarial firm the Mutual will violate the following NAIC Rule:

There is to be included or attached to Page 1 of the annual statement, the statement of a qualified actuary, entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to loss and loss adjustment expense reserves. The Qualified actuary must be appointed by the Board of Directors, or its equivalent, or by a committee of the Board, by December 31, of the calendar year for which the opinion is rendered. Whenever the appointed actuary is replaced by the Board of Directors, the company must notify the domiciliary commissioner within 30 days of the date of the Board action and give the reasons for the replacement. The appointed actuary must present a report to the Board of Directors each year on the items within the scope of the opinion.

Brett explained that the problem with Coopers & Lybrand did not arise until January. John Swasey made a motion to replace Coopers and Lybrand as the actuary for the Mutual with Taylor, Walker & Associates and adopt a resolution, if needed, at the next Board of Trustees meeting. Tony Dearden seconded the motion, which passed unanimously. The Board agreed that in order to protect the interest of Mutual this replacement is necessary and will explain the occurrences in writing to the Insurance Commissioner.

WEBER COUNTY PROPOSAL

Brett Rich explained that he has given the proposal to Weber County and has met with Dave Wilson to discuss. Brett is now preparing comparison sheets for Dave's review.

